

IC 35-41

ARTICLE 41. SUBSTANTIVE CRIMINAL PROVISIONS

IC 35-41-1

Chapter 1. Jurisdiction and Definitions

IC 35-41-1-1

Jurisdiction

Sec. 1. (a) As used in this section, "Indiana" includes:

- (1) the area within the boundaries of the state of Indiana, as set forth in Article 14, Section 1 of the Constitution of the State of Indiana;
- (2) the portion of the Ohio River on which Indiana possesses concurrent jurisdiction with the state of Kentucky under Article 14, Section 2 of the Constitution of the State of Indiana; and
- (3) the portion of the Wabash River on which Indiana possesses concurrent jurisdiction with the state of Illinois under Article 14, Section 2 of the Constitution of the State of Indiana.

(b) A person may be convicted under Indiana law of an offense if:

- (1) either the conduct that is an element of the offense, the result that is an element, or both, occur in Indiana;
- (2) conduct occurring outside Indiana is sufficient under Indiana law to constitute an attempt to commit an offense in Indiana;
- (3) conduct occurring outside Indiana is sufficient under Indiana law to constitute a conspiracy to commit an offense in Indiana, and an overt act in furtherance of the conspiracy occurs in Indiana;
- (4) conduct occurring in Indiana establishes complicity in the commission of, or an attempt or conspiracy to commit, an offense in another jurisdiction that also is an offense under Indiana law; or
- (5) the offense consists of the omission to perform a duty imposed by Indiana law with respect to domicile, residence, or a relationship to a person, thing, or transaction in Indiana.

(c) When the offense is homicide, either the death of the victim or bodily impact causing death constitutes a result under subsection (b)(1). If the body of a homicide victim is found in Indiana, it is presumed that the result occurred in Indiana.

As added by Acts 1976, P.L.148, SEC.1. Amended by Acts 1977, P.L.340, SEC.1; P.L.295-1995, SEC.1.

IC 35-41-1-2 Repealed

(Repealed by P.L.311-1983, SEC.49.)

IC 35-41-1-3

Application of definitions in chapter

Sec. 3. The definitions in this chapter apply throughout this title

and to all other statutes relating to penal offenses.
As added by P.L.311-1983, SEC.4.

IC 35-41-1-3.2

"Agency" defined

Sec. 3.2. (a) "Agency" means any authority, board, bureau, commission, committee, department, division, hospital, military body, or other instrumentality of:

- (1) the state, a county, a township, a city, a town, a separate municipal corporation, a special taxing district, or a public corporation; or
- (2) a state-assisted college or state-assisted university.

(b) The term does not include any part of the legislative department or the judicial department of state government.

As added by P.L.13-1987, SEC.13.

IC 35-41-1-3.3

"Effects of battery" defined

Sec. 3.3. "The effects of battery" refer to a psychological condition of an individual who has suffered repeated physical or sexual abuse inflicted by another individual who is the:

- (1) victim of an alleged crime for which the abused individual is charged in a pending prosecution; and
- (2) abused individual's:
 - (A) spouse or former spouse;
 - (B) parent;
 - (C) guardian or former guardian;
 - (D) custodian or former custodian; or
 - (E) cohabitant or former cohabitant.

As added by P.L.210-1997, SEC.2.

IC 35-41-1-4

"Bodily injury" defined

Sec. 4. "Bodily injury" means any impairment of physical condition, including physical pain.

As added by P.L.311-1983, SEC.5.

IC 35-41-1-4.3

"Bomb" defined

Sec. 4.3. (a) "Bomb" means an explosive or incendiary device designed to release:

- (1) destructive materials or force; or
- (2) dangerous gases;

that is detonated by impact, proximity to an object, a timing mechanism, a chemical reaction, ignition, or other predetermined means.

(b) The term does not include the following:

- (1) A firearm (as defined in IC 35-47-1-5) or the ammunition or components for handloading ammunition for a firearm.
- (2) Fireworks regulated under IC 22-11-14.

- (3) Boating, railroad, and other safety flares.
- (4) Propellants used in model rockets or similar hobby activities.
- (5) Commercially manufactured black powder in quantities not to exceed fifty (50) pounds, percussion caps, safety and pyrotechnic fuses, quills, quick and slow matches, and friction primers intended to be used solely for sporting, recreational, or cultural purposes in antique firearms or antique devices.

As added by P.L.104-2000, SEC.1.

IC 35-41-1-4.4

"Community transition program" defined

Sec. 4.4. "Community transition program" has the meaning set forth in IC 11-8-1-5.5.

As added by P.L.273-1999, SEC.213.

IC 35-41-1-4.5

Repealed

(Repealed by P.L.9-1990, SEC.17.)

IC 35-41-1-4.6

"Community restitution or service" defined

Sec. 4.6. "Community restitution or service" means performance of services directly for a:

- (1) victim;
- (2) nonprofit entity; or
- (3) governmental entity;

without compensation, including graffiti abatement, park maintenance, and other community service activities. The term does not include the reimbursement under IC 35-50-5-3 or another law of damages or expenses incurred by a victim or another person as the result of a violation of law.

As added by P.L.32-2000, SEC.25.

IC 35-41-1-4.7

"Community policing volunteer" defined

Sec. 4.7. "Community policing volunteer" means a person who is:

- (1) not a law enforcement officer; and
- (2) actively participating in a plan, system, or strategy:
 - (A) established by and conducted under the authority of a law enforcement agency; and
 - (B) in which citizens:
 - (i) participate with and are guided by the law enforcement agency; and
 - (ii) work with members of the law enforcement agency to reduce or prevent crime within a defined geographic area.

As added by P.L.175-2003, SEC.1.

IC 35-41-1-5

"Credit institution" defined

Sec. 5. "Credit institution" means a bank, insurance company, credit union, savings association, investment trust, industrial loan and investment company, or other organization held out to the public as a place of deposit of funds or a medium of savings or collective investment.

As added by P.L.311-1983, SEC.6. Amended by P.L.79-1998, SEC.104.

IC 35-41-1-6

"Crime" defined

Sec. 6. "Crime" means a felony or a misdemeanor.

As added by P.L.311-1983, SEC.7.

IC 35-41-1-6.3

"Crime of domestic violence" defined

Sec. 6.3. "Crime of domestic violence," for purposes of IC 3-7-13-5 and IC 33-28-4-8, means an offense or the attempt to commit an offense that:

- (1) has as an element the:
 - (A) use of physical force; or
 - (B) threatened use of a deadly weapon; and
- (2) is committed against a:
 - (A) current or former spouse, parent, or guardian of the defendant;
 - (B) person with whom the defendant shared a child in common;
 - (C) person who was cohabiting with or had cohabited with the defendant as a spouse, parent, or guardian; or
 - (D) person who was or had been similarly situated to a spouse, parent, or guardian of the defendant.

As added by P.L.195-2003, SEC.5. Amended by P.L.98-2004, SEC.154.

IC 35-41-1-6.5

"Crime involving domestic or family violence" defined

Sec. 6.5. "Crime involving domestic or family violence" means a crime that occurs when a family or household member commits, attempts to commit, or conspires to commit any of the following against another family or household member:

- (1) A homicide offense under IC 35-42-1.
- (2) A battery offense under IC 35-42-2.
- (3) Kidnapping or confinement under IC 35-42-3.
- (4) A sex offense under IC 35-42-4.
- (5) Robbery under IC 35-42-5.
- (6) Arson or mischief under IC 35-43-1.
- (7) Burglary or trespass under IC 35-43-2.
- (8) Disorderly conduct under IC 35-45-1.
- (9) Intimidation or harassment under IC 35-45-2.
- (10) Voyeurism under IC 35-45-4.
- (11) Stalking under IC 35-45-10.

(12) An offense against family under IC 35-46-1-2 through IC 35-46-1-8, IC 35-46-1-12, or IC 35-46-1-15.1.
As added by P.L.133-2002, SEC.62.

IC 35-41-1-6.6

"Dangerous gas" defined

Sec. 6.6. "Dangerous gas", for purposes of IC 35-41-1-4.3, means a toxic chemical or its precursors that through chemical action or properties on life processes cause death or permanent injury to human beings. The term does not include the following:

- (1) Riot control agents, smoke, and obscuration materials or medical products that are manufactured, possessed, transported, or used in accordance with the laws of the United States and of this state.
- (2) Tear gas devices designed to be carried on or about the person that contain not more than one-half (1/2) ounce of the chemical.

As added by P.L.104-2000, SEC.2.

IC 35-41-1-7

"Deadly force" defined

Sec. 7. "Deadly force" means force that creates a substantial risk of serious bodily injury.

As added by P.L.311-1983, SEC.8.

IC 35-41-1-8

"Deadly weapon" defined

Sec. 8. "Deadly weapon" means the following:

- (1) A loaded or unloaded firearm.
- (2) A destructive device, weapon, device, taser (as defined in IC 35-47-8-3) or electronic stun weapon (as defined in IC 35-47-8-1), equipment, chemical substance, or other material that in the manner it is used, or could ordinarily be used, or is intended to be used, is readily capable of causing serious bodily injury.
- (3) An animal (as defined in IC 35-46-3-3) that is:
 - (A) readily capable of causing serious bodily injury; and
 - (B) used in the commission or attempted commission of a crime.
- (4) A biological disease, virus, or organism that is capable of causing serious bodily injury.

As added by P.L.311-1983, SEC.9. Amended by P.L.318-1985, SEC.1; P.L.140-1994, SEC.4; P.L.156-2001, SEC.8; P.L.123-2002, SEC.33.

IC 35-41-1-8.5

"Destructive device" defined

Sec. 8.5. "Destructive device" has the meaning set forth in IC 35-47.5-2-4.

As added by P.L.123-2002, SEC.34.

IC 35-41-1-9

"Deviate sexual conduct" defined

Sec. 9. "Deviate sexual conduct" means an act involving:

- (1) a sex organ of one person and the mouth or anus of another person; or
- (2) the penetration of the sex organ or anus of a person by an object.

As added by P.L.311-1983, SEC.10. Amended by P.L.183-1984, SEC.1.

IC 35-41-1-10

"Dwelling" defined

Sec. 10. "Dwelling" means a building, structure, or other enclosed space, permanent or temporary, movable or fixed, that is a person's home or place of lodging.

As added by P.L.311-1983, SEC.11.

IC 35-41-1-10.5

"Family housing complex" defined

Sec. 10.5. "Family housing complex" means a building or series of buildings:

- (1) that is owned by a governmental unit or political subdivision;
- (2) that contains at least twelve (12) dwelling units; and
- (3) where children are domiciled or are likely to be domiciled.

As added by P.L.65-1996, SEC.10. Amended by P.L.216-1996, SEC.16.

IC 35-41-1-10.6

"Family or household member" of another person defined

Sec. 10.6. (a) An individual is a "family or household member" of another person if the individual:

- (1) is a current or former spouse of the other person;
- (2) is dating or has dated the other person;
- (3) is or was engaged in a sexual relationship with the other person;
- (4) is related by blood or adoption to the other person;
- (5) is or was related by marriage to the other person;
- (6) has or previously had an established legal relationship:
 - (A) as a guardian of the other person;
 - (B) as a ward of the other person;
 - (C) as a custodian of the other person;
 - (D) as a foster parent of the other person; or
 - (E) in a capacity with respect to the other person similar to those listed in clauses (A) through (D); or
- (7) has a child in common with the other person.

(b) An individual is a "family or household member" of both persons to whom subsection (a)(1), (a)(2), (a)(3), (a)(4), (a)(5), (a)(6), or (a)(7) applies if the individual is a minor child of one (1) of the persons.

As added by P.L.1-2003, SEC.92 and P.L.221-2003, SEC.17.

IC 35-41-1-10.7

Repealed

(Repealed by P.L.1-2003, SEC.106.)

IC 35-41-1-10.8

"Food processing facility" defined

Sec. 10.8. "Food processing facility" means a facility used to prepare or process animal, plant, or other food ingredients into food products intended for sale or distribution to the general public for human consumption.

As added by P.L.1-2003, SEC.93.

IC 35-41-1-11

"Forcible felony" defined

Sec. 11. "Forcible felony" means a felony that involves the use or threat of force against a human being, or in which there is imminent danger of bodily injury to a human being.

As added by P.L.311-1983, SEC.12.

IC 35-41-1-12

"Governmental entity" defined

Sec. 12. "Governmental entity" means:

- (1) the United States or any state, county, township, city, town, separate municipal corporation, special taxing district, or public school corporation;
- (2) any authority, board, bureau, commission, committee, department, division, hospital, military body, or other instrumentality of any of those entities; or
- (3) a state-assisted college or state-assisted university.

As added by P.L.311-1983, SEC.13.

IC 35-41-1-12.3

"Graffiti" defined

Sec. 12.3. "Graffiti" means any unauthorized inscription, work, figure, or design that is marked, etched, scratched, drawn, or painted on a component of any building, structure, or other facility.

As added by P.L.94-1996, SEC.4.

IC 35-41-1-13

"Harm" defined

Sec. 13. "Harm" means loss, disadvantage, or injury or anything so regarded by the person affected, including loss, disadvantage, or injury to any other person in whose welfare he is interested.

As added by P.L.311-1983, SEC.14.

IC 35-41-1-14

"Human being" defined

Sec. 14. "Human being" means an individual who has been born

and is alive.

As added by P.L.311-1983, SEC.15.

IC 35-41-1-15

"Imprison" defined

Sec. 15. "Imprison" means to:

- (1) confine in a penal facility;
- (2) commit to the department of correction; or
- (3) assign to a community transition program under IC 11-10-11.5.

As added by P.L.311-1983, SEC.16. Amended by P.L.273-1999, SEC.214.

IC 35-41-1-16

"Included offense" defined

Sec. 16. "Included offense" means an offense that:

- (1) is established by proof of the same material elements or less than all the material elements required to establish the commission of the offense charged;
- (2) consists of an attempt to commit the offense charged or an offense otherwise included therein; or
- (3) differs from the offense charged only in the respect that a less serious harm or risk of harm to the same person, property, or public interest, or a lesser kind of culpability, is required to establish its commission.

As added by P.L.311-1983, SEC.17.

IC 35-41-1-17

"Law enforcement officer" and "federal enforcement officer" defined

Sec. 17. (a) "Law enforcement officer" means:

- (1) a police officer, sheriff, constable, marshal, or prosecuting attorney;
- (2) a deputy of any of those persons;
- (3) an investigator for a prosecuting attorney;
- (4) a conservation officer; or
- (5) an enforcement officer of the alcohol and tobacco commission.

(b) "Federal enforcement officer" means any of the following:

- (1) A Federal Bureau of Investigation special agent.
- (2) A United States Marshals Service marshal or deputy.
- (3) A United States Secret Service special agent.
- (4) A United States Fish and Wildlife Service special agent.
- (5) A United States Drug Enforcement Agency agent.
- (6) A Bureau of Alcohol, Tobacco, and Firearms agent.
- (7) A United States Forest Service law enforcement officer.
- (8) A United States Department of Defense police officer or criminal investigator.
- (9) A United States Customs Service agent.
- (10) A United States Postal Service investigator.

(11) A National Park Service law enforcement commissioned ranger.

(12) United States Department of Agriculture, Office of Inspector General special agent.

(13) A United States Immigration and Naturalization Service special agent.

(14) An individual who is:

(A) an employee of a federal agency; and

(B) authorized to make arrests and carry a firearm in the performance of the individual's official duties.

As added by P.L.311-1983, SEC.18. Amended by P.L.319-1987, SEC.2; P.L.47-1987, SEC.13; P.L.101-1990, SEC.6; P.L.40-1991, SEC.2; P.L.67-1992, SEC.4; P.L.244-1993, SEC.1; P.L.106-2001, SEC.1; P.L.204-2001, SEC.64; P.L.1-2002, SEC.148.

IC 35-41-1-18

"Lawful detention" defined

Sec. 18. (a) "Lawful detention" means:

- (1) arrest;
- (2) custody following surrender in lieu of arrest;
- (3) detention in a penal facility;
- (4) detention in a facility for custody of persons alleged or found to be delinquent children;
- (5) detention under a law authorizing civil commitment in lieu of criminal proceedings or authorizing such detention while criminal proceedings are held in abeyance;
- (6) detention for extradition or deportation;
- (7) placement in a community corrections program's residential facility;
- (8) electronic monitoring;
- (9) custody for purposes incident to any of the above including transportation, medical diagnosis or treatment, court appearances, work, or recreation; or
- (10) any other detention for law enforcement purposes.

(b) Except as provided in subsection (a)(7) and (a)(8), the term does not include supervision of a person on probation or parole or constraint incidental to release with or without bail.

As added by P.L.311-1983, SEC.19. Amended by P.L.17-1998, SEC.1; P.L.1-1999, SEC.78.

IC 35-41-1-18.3

"Machine gun" defined

Sec. 18.3. "Machine gun" means a weapon that:

- (1) shoots; or
- (2) can be readily restored to shoot;

automatically more than one (1) shot, without manual reloading, by a single function of the trigger.

As added by P.L.211-1997, SEC.1.

IC 35-41-1-18.5

"Motor vehicle" defined

Sec. 18.5. "Motor vehicle" has the meaning set forth in IC 9-13-2-105(a).

As added by P.L.134-1987, SEC.20. Amended by P.L.2-1991, SEC.105.

IC 35-41-1-19

"Offense" defined

Sec. 19. "Offense" means a crime. The term does not include an infraction.

As added by P.L.311-1983, SEC.20.

IC 35-41-1-20

"Official proceeding" defined

Sec. 20. "Official proceeding" means a proceeding held or that may be held before a legislative, judicial, administrative, or other agency or before an official authorized to take evidence under oath, including a referee, hearing examiner, commissioner, notary, or other person taking evidence in connection with a proceeding.

As added by P.L.311-1983, SEC.21.

IC 35-41-1-21

"Penal facility" defined

Sec. 21. "Penal facility" means state prison, correctional facility, county jail, penitentiary, house of correction, or any other facility for confinement of persons under sentence, or awaiting trial or sentence, for offenses. The term includes a correctional facility constructed under IC 4-13.5.

As added by P.L.311-1983, SEC.22. Amended by P.L.240-1991(ss2), SEC.97; P.L.12-1996, SEC.16.

IC 35-41-1-22

"Person" defined

Sec. 22. (a) "Person" means a human being, corporation, limited liability company, partnership, unincorporated association, or governmental entity.

(b) "Person", for purposes of section 10.7 of this chapter, means an adult or a minor.

As added by P.L.311-1983, SEC.23. Amended by P.L.8-1993, SEC.509; P.L.133-2002, SEC.64.

IC 35-41-1-23

"Property" defined

Sec. 23. (a) "Property" means anything of value. The term includes:

- (1) a gain or advantage or anything that might reasonably be regarded as such by the beneficiary;
- (2) real property, personal property, money, labor, and services;
- (3) intangibles;
- (4) commercial instruments;

- (5) written instruments concerning labor, services, or property;
- (6) written instruments otherwise of value to the owner, such as a public record, deed, will, credit card, or letter of credit;
- (7) a signature to a written instrument;
- (8) extension of credit;
- (9) trade secrets;
- (10) contract rights, choses-in-action, and other interests in or claims to wealth;
- (11) electricity, gas, oil, and water;
- (12) captured or domestic animals, birds, and fish;
- (13) food and drink; and
- (14) human remains.

(b) Property is that "of another person" if the other person has a possessory or proprietary interest in it, even if an accused person also has an interest in that property.

As added by P.L.311-1983, SEC.24.

IC 35-41-1-23.7

"Public park" defined

Sec. 23.7. "Public park" means any property operated by a political subdivision for park purposes (as defined in IC 36-10-1-2).

As added by P.L.296-1995, SEC.1.

IC 35-41-1-24

"Public servant" defined

Sec. 24. "Public servant" means a person who:

- (1) is authorized to perform an official function on behalf of, and is paid by, a governmental entity;
- (2) is elected or appointed to office to discharge a public duty for a governmental entity; or
- (3) with or without compensation, is appointed in writing by a public official to act in an advisory capacity to a governmental entity concerning a contract or purchase to be made by the entity.

The term does not include a person appointed by the governor to an honorary advisory or honorary military position.

As added by P.L.311-1983, SEC.25. Amended by P.L.13-1987, SEC.15.

IC 35-41-1-24.3

"School bus" defined

Sec. 24.3. "School bus" means any motor vehicle designed and constructed for the accommodation of more than ten (10) passengers, which is used for the transportation of Indiana school children.

As added by P.L.296-1987, SEC.3.

IC 35-41-1-24.7

"School property" defined

Sec. 24.7. "School property" means the following:

- (1) A building or other structure owned or rented by:

- (A) a school corporation;
- (B) an entity that is required to be licensed under IC 12-17.2 or IC 12-17.4;
- (C) a private school (as defined in IC 20-9.1-1-3); or
- (D) a federal, state, local, or nonprofit program or service operated to serve, assist, or otherwise benefit children who are at least three (3) years of age and not yet enrolled in kindergarten, including the following:
 - (i) A Head Start program under 42 U.S.C. 9831 et seq.
 - (ii) A special education preschool program.
 - (iii) A developmental child care program for preschool children.

- (2) The grounds adjacent to and owned or rented in common with a building or other structure described in subdivision (1).

As added by P.L.296-1987, SEC.4. Amended by P.L.34-1991, SEC.27; P.L.9-1991, SEC.95; P.L.2-1992, SEC.880; P.L.81-1992, SEC.38; P.L.1-1993, SEC.240; P.L.160-1994, SEC.1.

IC 35-41-1-24.8

"Scientific research facility" defined

Sec. 24.8. "Scientific research facility" means a facility in which research is conducted.

As added by P.L.151-1989, SEC.10.

IC 35-41-1-25

"Serious bodily injury" defined

Sec. 25. "Serious bodily injury" means bodily injury that creates a substantial risk of death or that causes:

- (1) serious permanent disfigurement;
- (2) unconsciousness;
- (3) extreme pain;
- (4) permanent or protracted loss or impairment of the function of a bodily member or organ; or
- (5) loss of a fetus.

As added by P.L.311-1983, SEC.26. Amended by P.L.261-1997, SEC.1.

IC 35-41-1-26

"Sexual intercourse" defined

Sec. 26. "Sexual intercourse" means an act that includes any penetration of the female sex organ by the male sex organ.

As added by P.L.311-1983, SEC.27.

IC 35-41-1-26.5

"Terrorism" defined

Sec. 26.5. "Terrorism" means the unlawful use of force or violence or the unlawful threat of force or violence to intimidate or coerce a government or all or part of the civilian population.

As added by P.L.156-2001, SEC.9.

IC 35-41-1-26.8**"Total costs of incarceration" defined**

Sec. 26.8. "Total costs of incarceration" means the average daily cost of incarcerating an offender, as described in IC 11-10-13, multiplied by the number of days the offender is sentenced to a term of imprisonment.

As added by P.L.85-2004, SEC.10.

IC 35-41-1-27**"Utter" defined**

Sec. 27. "Utter" means to issue, authenticate, transfer, publish, deliver, sell, transmit, present, or use.

As added by P.L.311-1983, SEC.28.

IC 35-41-1-28**"Vehicle" defined**

Sec. 28. "Vehicle" means a device for transportation by land, water, or air. The term includes mobile equipment with provision for transport of an operator.

As added by P.L.311-1983, SEC.29.

IC 35-41-1-29**"Youth program center" defined**

Sec. 29. (a) "Youth program center" means the following:

- (1) A building or structure that on a regular basis provides recreational, vocational, academic, social, or other programs or services for persons less than eighteen (18) years of age.
- (2) The real property on which a building or structure described in subdivision (1) is located.

(b) The term does not include school property (as defined in section 24.7 of this chapter).

As added by P.L.17-2001, SEC.14.

IC 35-41-1-29.4**"Weapon of mass destruction" defined**

Sec. 29.4. "Weapon of mass destruction" means any chemical device, biological device or organism, or radiological device that is capable of being used for terrorism.

As added by P.L.156-2001, SEC.10.